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MEETING OF COMMITTEE FOR THE ADVANCEMENT OF INTERNATIONAL LAW

Friday, April 29, 1921, 10 o'clock, a. m.

The Committee met at 10:45 o'clock a. m., Professor GEORGE G. WILSON presiding.

Chairman WILSON. Mr. Root asked me to preside temporarily as he has another meeting at which he has to preside in the early part of the morning.

The subject for the morning meeting is stated in the program as "Meeting of Committee for the Advancement of International Law, to coordinate work of the subcommittees."

These subcommittees, as I understand, conferred yesterday and are ready this morning to make preliminary reports for discussion and coordination. These discussions, I presume, will be under the ordinary rules of the Society, namely, not longer than five minutes to each speaker, without the consent of the floor.

The reports of the subcommittees, then, will be in order, and if there is no objection we will proceed first by calling for the report of Subcommittee No. 1, whose subject is "To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war." Mr. Charles Noble Gregory is chairman of that subcommittee.

Mr. CHARLES NOBLE GREGORY. I beg to state, Mr. Chairman, that I think it would be impossible to make a statement within the limits as stated by the chair, if I understand five minutes as a limit applies to us.

Chairman WILSON. You misunderstood. I said the discussion of the report from the floor would be limited, under the ordinary rule, to five minutes. The chairmen of the subcommittees have the entire forenoon at their disposal. Mr. Gregory has the floor for five minutes and as much more as he sees fit to use.

Mr. GREGORY. Now, I do not know the extent to which I ought to go into the matter of our report at this time, but I think that probably the first thing to do is to explain to the general committee the scheme of our report and the reasons for its adoption. Dr. Scott, chairman of the program committee, said to me that he thought it would be desirable that Subcommittee No. 1 should take for its theme the violation of the laws and customs of war as reported by the Commission on Responsibilities of the

Conference of Paris of 1919. Acting upon the suggestion of Dr. Scott, the subcommittee has followed that course.

The commission whose report, therefore, became our guide, in the first place report the violation of neutral territory, and we therefore begin on the report by endeavoring to state the rules of international law as to the violation of neutral territory.

The commission proceeds further by citing 32 examples of offenses committed by the forces of the Central Empires and their allies against the laws and customs of war and of humanity. Your subcommittee took up those 32 points and prepared brief and tentative statements as to all except four. Three of those four points were confided to a member of the committee at a distance and he was expecting to prepare them and to present them here. I have received a telegram from him explaining that he is detained in a case and has not been able to prepare anything and has not been able to attend. They were points of special difficulty. The other one is a point regarding which we have made no suggestion. We find ourselves with nothing to act upon.

Now, Mr. Chairman, I should like to ask the pleasure of the committee as to how far further than this I shall make the report. The report is, according to the program, to be submitted tonight to the Society. Will we have time to take up the report and go through it? We submit it as a tentative and preliminary report and do not ask action upon it because it is too hasty. It may be the basis of final action, and we ask leave to file it as a report of progress. That suggestion again was made to me by Dr. Scott and I agree with him and the subcommittee agreed to it heartily.

We were appointed within a very short time of the meeting, and we were not able to meet until just before the conference and we therefore feel that the work should not be treated as final but submit it as a tentative and preliminary report.

If you please, I would like to ask the instruction of the Chair as to whether we shall read the report.

MR. EDWARD C. ELIOT. Mr. Chairman, it seems from Mr. Gregory's statement that he has accomplished the purpose of the subcommittee so far as this committee is concerned, because he has stated definitely what the function of that subcommittee is admitted to be, and therefore it would be unnecessary to go into the detail of this report. It is clearly within the purview of the subject as he has outlined it, the general object of this meeting being to coordinate the work of the subcommittees. Therefore, if proper, I move that the report of Mr. Gregory be received and that he be relieved from a further statement of action taken.

MR. FREDERIC R. COUDERT. I am not sure that I got the matter quite clearly in mind. Is the report of your subcommittee going as the report of this whole committee to the Society tonight and then to be definitely passed upon?

Mr. GREGORY. I do not so understand. The program, I think, states that the reports of the subcommittees are to be submitted tonight, but this is a meeting to coordinate them so far as possible. It seems to me it might be a very useful procedure for each chairman to state to the whole committee the scheme upon which his subcommittee has acted and then if any further consultation or correlation is possible, that might follow.

Chairman WILSON. The motion was not seconded, as I undersand, and has not been put.

Mr. COUDERT. I second the motion.

Chairman WILSON. The motion is made and seconded that this report be received.

Mr. ELIOT. And that the suggestion of the chairman be accepted and that it be unnecessary to present the full report of that subcommittee to this meeting.

Professor EUGENE WAMBAUGH. Upon that latter point I must say that I would like to know about this matter of correlation. I would like to hear the subcommittee's report. If it would take half an hour I know we have not the time, but I suppose it would take only about ten minutes?

Mr. GREGORY. The report takes in about 25 pages.

Professor WAMBAUGH. This is really interesting information for me, and I think for all of us. I will know best what the scope of the committee work is when I know concretely what it has done.

A MEMBER. Would it not facilitate our consideration if Mr. Gregory gave us in summary fashion the points which he has brought out in his report.

Chairman WILSON. If you will pardon the chair, I scarcely see how we can go ahead with the work of coordinating the work of the subcommittees without knowing what they have done. We have a very brief sketch but I think it would hardly be possible from it to prevent overlapping in the work of the subcommittees. It is for the house to decide, but I think most of us would like to hear more from Mr. Gregory's report.

Mr. GREGORY. I think our different subcommittees have had entirely different conceptions of their duties. Their appointments call for entirely different conceptions. If I could hear from the other subcommittees and their chairmen concerning the general scope taken in hand, I think it would be a great help, and then, having heard from each chairman, the reports could be presented and possibly compared and dealt with as the committee saw fit.

Chairman WILSON. Any procedure that the house would like will be all right. If it would like simply a preliminary presentation by each subcommittee and then a further presentation later, then perhaps we would allow the motion to lie upon the table.

Mr. ELIOT. If that is the Chairman's view, I will withdraw the motion and have the program proceed in that way.

Chairman WILSON. It is suggested that brief reports be made by the subcommittees first, to give a survey, and then later that more detailed reports be made as may be needed. If there be no objection, we will proceed according to that fashion.

The second report is from Subcommittee No. 2, the subject being "To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war." This report will be made by Dr. Judson.

Dr. HARRY PRATT JUDSON. This subcommittee understood its function was to suggest any new rules of law and amendments to existing rules of law.

We had a vast number of suggestions from members of the subcommittee and others. We have found it, in the first place, entirely impossible to go over a large field and formulate in a definite shape amendments to any great extent in the very short time at our disposal.

The subcommittee was appointed very recently and we met for the first time yesterday, and, therefore, we went over the suggestions and agreed to select a few of them for the consideration of the Society; a very small number, our idea being that that might make a start, at least. Others we did not pass upon at all for lack partly of any adequate time, and secondly, because many suggestions appeared to overlap the functions of other subcommittees with which we are not concerned.

Therefore, our report will be extremely brief and will embody the suggestion of some six points which we desire to have considered, especially as it was the understanding of our subcommittee that the Society will doubtless appoint a committee or committees to take into consideration anything which may be suggested at this meeting so as to give adequate study for another meeting of the Society.

That, in substance, is the report of Subcommittee No. 2.

We had in mind selecting some points for consideration, and we had in mind also that the reports of all these committees would doubtless have some bearing upon the Court of International Justice.

May I simply speak of the points?

- (1) Responsibility for illegal acts of states.
- (2) Transfer of territory.
- (3) Free access to the sea.
- (4) Protection of prisoners of war.
- (5) Neutral prizes.
- (6) The status of government vessels.

Those are the points which we discussed and selected out of more than a hundred which were submitted to us for consideration, and out of several

hundred more that might be considered if adequate study were given to the entire subject.

Mr. FREDERIC R. COUDERT. May I ask whether the committee came to any conclusion in regard to those points?

Dr. JUDSON. Yes sir; in some cases definitely, and in other cases it was decided to refer them for consideration, recommending that they be considered adequately within the coming year.

Mr. COUDERT. Possibly I misunderstood the function of our meeting, but I see some of my colleagues seem to be in the same situation and same state of misunderstanding, and therefore I make bold to state it. I assumed we were coming together to hear from each chairman the definite conclusions each subcommittee had reached, those definite conclusions to be submitted to this meeting, and if this meeting of the whole committee concurs in the conclusions reached by the several subcommittees, then those conclusions here reached would go finally tonight to the whole body. That was the understanding I had of it. I may be wrong, but I do not see that we could get anywhere unless we could know just what conclusions each subcommittee reached. Otherwise, there is nothing for this committee, as I see it, to pass upon. Am I right about that?

Chairman WILSON. As I understand, and I am open to correction, of course, our function this morning is, so far as possible, to delimit the fields of work of the different subcommittees because they may easily overlap. There is no reason why two committees should be doing exactly the same thing. I am taking it from the title as it reads here, "To coördinate the work of subcommittees," and in order to do that we must know roughly what the subcommittees have done.

Mr. COUDERT. Then, we need to know only the topics they treated and not the conclusions.

Chairman WILSON. I think we scarcely need the conclusions. I am entirely at the disposal of the house, but I understand that as our function.

Dr. JUDSON. Subcommittee No. 2, with the great number of cases before it, thought it impracticable to reach conclusions in definite form on short time. Of course, we had personal opinions. We met for two or three hours yesterday, but the field is so vast and the study required to form conclusions should be so extensive that it seemed to the committee impracticable to express conclusions on most of these subjects which would be worthy of the consideration of the Society, and therefore we recommended further consideration and study rather than definite conclusions at this time.

It would seem to the subcommittee that many of these things require long and careful study and that definite formulation as a result of that study could be presented later, but not on two weeks or one day's notice. That is the reason this subcommittee did not present more detailed recommendations.

That may or may not conform to the wishes of the general committee. If not, of course, the subcommittee will meet again this afternoon and follow such instructions as the general committee may give us.

Mr. WILLIAM C. DENNIS. I did not understand that this general committee is to make a report to the Society tonight, but that each separate subcommittee will report.

Chairman WILSON. That is as I understand it.

Mr. DENNIS. So that Subcommittee No. 1 does not have to agree with Subcommittee No. 4 at all. All we need to do is to separate the fields.

Chairman WILSON. That is as I understand it, so that there will be no duplication.

Professor MANLEY O. HUDSON. Will there be opportunity this evening for the discussion of the recommendations of the various subcommittees?

Chairman WILSON. I see no reason why there should not be. They make their reports, and I suppose any report made to the Society would be open to discussion by the Society.

Subcommittee No. 3 has as its function "To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore." Of this committee Governor Baldwin is chairman.

Hon. SIMON E. BALDWIN. Subcommittee No. 3 has regarded this meeting tonight as one not for the discussion of points, not that we desire to have the opinion of the Society definitely on those points, but the subcommittee will present the points to be made the subject of discussion hereafter. We have come to the conclusion to note some half dozen different subjects which are worthy of particular consideration, and I will read them:

- (1) The forms and requisites of declarations of war since 1914.
- (2) The effect of war upon treaties, that is, opinions concerning the force of the treaty between the United States and Prussia of 1785 and 1828.
- (3) The rules of land warfare, that is, the controversies concerning the application of Article 23 (h) of the Fourth Hague Convention of 1907.
- (4) Problems of maritime warfare, that is, the abolition of the distinction between absolute and conditional contraband, and the extension of the doctrine of continuous voyage.

The following suggestions have been made:

- (1) That outside of neutral jurisdiction, the ultimate destination of a neutral vessel or cargo determines the liability of either to condemnation.
- (2) That there should be considered the abandonment of the doctrine of conditional contraband, specifically with reference to the treatment of foodstuffs.
- (3) That there should be considered the feasibility of a general agreement concerning the operation and effect of neutral governmental certification of the non-hostile uses of neutral foodstuffs destined to hostile territory, as a safeguard against capture and condemnation.

We ask that the Society embrace these points under the subjects for future consideration.

Chairman WILSON. If there be no objection this report will be received. It will be observed that this report overlaps the report of the preceding subcommittee in several respects.

Subcommittee No. 4 has as its duty the consideration of subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted. Dr. Paul S. Reinsch is chairman of this subcommittee.

Dr. PAUL S. REINSCH. This Subcommittee No. 4 is apparently a residuary legatee and to it fall the things which the other committees do not consider to be within their province.

We have endeavored to define for our own information and guidance the functions of the subcommittee in this language:

"The committee deals essentially with matters entirely new or only partially settled by precedent, and will also deal with questions which the other committees have not considered sufficiently settled to make part of their work.

"More specifically, the function of the committee is to suggest topics on which there should be rules of international law or policy regarding matters which have heretofore been or which hereafter may become productive of war or of international friction."

Now, I may state that in the discussions of the subcommittee which have taken place yesterday and early this morning, a strong feeling was expressed that it would not be desirable for the emphasis of the action of the Society to be placed entirely or even primarily on the rules of war or laws of war; that unless the rules governing normal relationship among nations can be developed—in other words, unless the principle of common interest expressing itself in common action or joint action and joint interpretation, can be given development and thereby there can be created a strong feeling of solidarity among the different nations, the mere reaffirmation or strengthening of the rules of law will not be of very much advantage, because there would not be back of it that strong, social feeling throughout civilized humanity which will ensure the enforcement of such laws. That feeling must be generated in times of peace, and not only by way of making rules to be applied when war arises, but by creating normal relationships and protecting them by legal arrangements which will in themselves afford strength to that feeling of solidarity upon which the enforcement of any rules of whatever kind must depend.

Now, I might say that the subcommittee, having only just begun to act, agrees with the statement made by the other chairmen of committees that we can hardly be expected to do more, and are undoubtedly not expected to do more, than to indicate topics which should be studied in the immediate future with a view of presenting more complete and more definite conclu-

sions. Probably this subcommittee will present certain topics requiring immediate study and immediate formulation in order to be of assistance to the work of the court, and other topics not so directly connected with that great work which yet through their inherent importance require attention.

We have not formulated our report at all, because it was dependent upon the position the other subcommittees would take with regard to the matters that they desire to occupy. The fields have now been indicated by each chairman for his subcommittee, and it will be possible for this fourth subcommittee to be sure of its ground in making recommendations.

For your information I wish simply to read a list of topics which have been suggested by members of the subcommittee and which will be now considered by the subcommittee as a whole with a view of including them in the final report if deemed advisable:

The international regulation of monopolies and combinations in restraint of trade.

The doctrine of international public utilities.

The neutralization of mandatory territories.

The control of production and distribution of the chief raw materials.

The exploitation of undeveloped countries.

All those subjects which are included under the term of "the open door policy."

Rules of international law to cover the guilt of individuals who have brought about aggressive warfare.

A definition of acts which might be characterized as international crimes.

Espionage in time of peace.

The subject of intervention, the grounds upon which intervention is justified.

The applicability of the whole theory of state equality to modern political conditions, and in modern international organization. (That is a question of principle or policy and has particular reference to discriminatory legislation and preferential tariffs.)

Recognition of changes in government where it does not involve the substitution of an entirely new government.

The general conditions upon which new states should be admitted into the family of nations.

Recognition of new, *de facto* states.

Wider application of the principle of neutralization of states.

Uniform regulations with respect to conflicts of citizenship.

Uniform regulations with respect to the rights of resident aliens.

The common use of the high seas and territorial waters.

Definite rules concerning extradition.

The ethics of diplomacy, particularly with respect to secrecy.

The right of asylum.

The relations of international administrative unions and their activities.

The protection of domiciled aliens.

International debts and obligations (involving the consideration of so-called Drago doctrine).

Clear distinction between sovereign and semi-sovereign states.

States under wardship.

The jurisdiction of the air.

Rights and immunities of consuls (which rest at the present time entirely upon an indefinite series of precedents based on the good will of the state receiving the consul).

Specific definition of the rules relating to electrical communication.

The avoidance of double taxation and the adjustment of the claims of different sovereignties to taxable properties.

One member who is not present here suggested that the Society should devote attention to the codification of private international law and should favor the participation of the United States Government in the conferences on private international law, from which we have hitherto held aloof.

I must apologize for the unfinished character of this report. I have given this list merely in a tentative manner so as to give an idea as to what subjects are before the subcommittee. The subcommittee will select from these subjects those which appear to be most in need of early consideration.

Chairman WILSON. This report will be received unless there is objection.

What is the wish of the Society as to what to do now with these reports?

Professor WILLIAM I. HULL. I observe that there are some instances of overlapping in the reports, and I move that the chairmen of the subcommittees be requested to get together and decide among themselves as to which subcommittee each of these topics shall go, referring to those which have appeared in more than one report.

Mr. CHARLES HENRY BUTLER. Speaking to that motion, it is what necessarily will have to be done. I would suggest, however, that that committee should be a standing committee and should be known as the jurisdictional committee. It could determine not only now but from time to time to which committee a subject shall go.

The suggestion that the four chairmen get together and form a committee is a good one, but it seems to me that that committee on jurisdiction ought to consist of the chairman and secretary of the whole committee, the chairman of each subcommittee and say one from each subcommittee to be named as an alternate by the chairman. In that way the jurisdictional committee will be able to decide. It might not be able to reach a conclusion between the four chairmen, but in regard to such a matter I should think that the chairman and secretary of the whole committee ought certainly to participate, and that will give a finality to the decision of jurisdiction. Sub-

jects could then be referred specifically by that committee to the four different subcommittees and there would be no overlapping and no question of jurisdiction, which certainly must be delimited. Otherwise there would be considerable overlapping. In that way this committee, which has already been suggested and which I endorse, could be a standing committee and from time to time refer these subjects,—and it is going to be impossible to take all of them up at once,—to subcommittees Nos. 1, 2, 3, and 4, beginning with a certain number at its first meeting, so that each subcommittee could have a docket which it could take up and distribute between its own members. If you will accept the amendment that that committee on jurisdiction include not only the four chairmen but the officers of the general committee, I would make that suggestion.

Professor HULL. I will be very glad to accept that amendment. It seems to be a very useful procedure. May I inquire who the president and secretary are?

Chairman WILSON. Mr. Root and Mr. Scott.

Mr. BUTLER. I understand that the present meeting is a meeting of the general committee, and that the present chairman is presiding in the absence of the chairman of the committee.

Chairman WILSON. Yes.

Mr. BUTLER. So a motion would be in order that an additional committee be appointed consisting of the chairmen of the four subcommittees and one additional member of each subcommittee to act with the chairman and secretary of the whole committee as a jurisdictional committee.

Dr. JUDSON. The motion is admirable, I think, so far as procedure is concerned, but I understand these committees are committees for this meeting only. The Society may or may not appoint other committees to continue. I trust they will. They may or may not appoint them. I do not know what action they will take. Therefore the motion looks toward a standing organization of committees which I do not suppose has yet been constituted. Am I correct?

Chairman WILSON. I presume you are, because I know of no action of the Society constituting this committee permanently.

Dr. JUDSON. So that Subcommittee No. 2 is only for this meeting. It is a very admirable motion and I think it ought to be accomplished in some form.

Mr. BUTLER. This jurisdictional committee may necessarily function only so long as this whole committee is in existence, but we need it this afternoon so as to get this delimitation for our reports this evening, and then if the Society continues the organization of the committee, it may be done on motion that the organization of the committee, as made by itself, can continue.

Mr. ARTHUR K. KUHN. I very much agree with the suggestion, except that I would add that this new committee be not only a committee on juris-

diction, but also a committee on plan and scope. It seems to me it is equally as important that the general committee should be working toward some definite results and have a directive agency as to the subjects which they consider of most immediate and present importance.

From the reports that we have received from the four chairmen this morning, there is simply an overwhelming amount of material, and while the jurisdiction of that overwhelming material might be very well distributed and correctly distributed among the subcommittees, they might all have a right to deal with any one of these many questions, and the result would be that the general committee would not arrive at definite results upon immediate and pressing questions.

I think the committee on jurisdiction ought to have the power also of determining those questions which the various subcommittees shall deal with first in some adequate and complete manner, so I suggest that the committee be made one of jurisdiction, plan and scope.

Chairman WILSON. Would it meet Mr. Kuhn's idea if you simply called it a committee on the organization of the work?

Mr. KUHN. Certainly.

Chairman WILSON. I mean that would cover distribution, allocation, etc.

Mr. KUHN. If it were assured that that committee is to fix the work of the various subcommittees.

Mr. BUTLER. So as to include jurisdiction, plan and scope?

Chairman WILSON. Yes. The motion is made that a committee on organization of work, consisting of the chairman and secretary of the committee as a whole and the chairman and one additional member from each subcommittee,—

Mr. BUTLER. The question is whether that should be an alternate or a member. It might make the committee too large.

Chairman WILSON. That would be ten. That is a large committee. In the other case it would be six. I think six is large enough.

Mr. BUTLER. The chairman of each subcommittee, with power to appoint an alternate.

Chairman WILSON. Then, as I understand, the motion before the house is this:

That a committee on organization of work be appointed, consisting of the chairman and secretary of the committee for the advancement of international law, together with the chairmen of the respective subcommittees, who have power to appoint in each case an alternate.

Governor BALDWIN. Would that look to the continuance of this committee as a permanent one?

Chairman WILSON. I understand this is merely to function during the period of the life of this committee on the advancement of international law. Whether or not the Society will continue this committee or not is for the Society to determine at its regular meeting.

Mr. COUDERT. May I make an individual suggestion for what it is worth? I take it that certain sections of the human race have interested and perhaps amused themselves for a great many generations in proposing the ascertainment and codification of the law of nations. It may not have begun after the dissolution of the Roman Empire in the west, but it certainly did begin after the dissolution of the Roman Empire in the east and it probably will continue for some time to come. Evidently we are coming to that in our efforts of dealing with and crystallizing that century-old process, and the law of nations will be codified and reformed. I am rather a skeptic, and I am somewhat doubtful of that being done, but at the same time I think we should feel a certain modesty in regard to these matters, and under the circumstances I would suggest that this illustrious body of jurists here assembled, under all the circumstances, pass some sort of resolution to the effect that there are a great many problems here wide in scope and hoary with age and accentuated by present and past difficulties that cannot be readily solved this afternoon or even this evening, and that under those circumstances this general committee out of the abundance of its wisdom suggests to the Society this evening the value of making this kind of a committee, independent, of course, of the personnel, permanent; that we do not wish to perpetuate ourselves, but that a committee of this character be made a permanent committee or standing committee of the organization, to report again next year the result of its further researches, so that the law of nations may not be reformed, codified and crystallized more hastily than would seem wise and expedient.

I throw out that suggestion because I think it may be useful today.

Chairman WILSON. Are there any further remarks?

Dr. JUDSON. I would like to second the motion.

Chairman WILSON. There is a motion before the house for the appointment of the committee on organization of work. Are there any further remarks? If not, all in favor will signify by saying "aye"; contrary, "no."

The motion prevails.

Mr. COUDERT. Now, I renew my motion.

Chairman WILSON. I think it would be desirable if we could have that in a little more concrete form, Mr. Coudert.

Mr. COUDERT. I shall endeavor to concretize it: That it is the sentiment of this general committee that, owing to the wide scope, diversity and very great difficulty of the problems to be dealt with, the committee should continue; that this committee or a similar committee should continue its functions during the coming year and make a further report directly or through its subcommittees to the next meeting of the Society.

Mr. HYDE. I second that motion.

Dr. JUDSON. I want to second that motion. I confess that it is entirely impossible for us, meeting here in committees twenty-four hours or so before the meeting of the Society, to recommend any tangible or specific

things for the Society to act upon. In the second place I confess I feel not to be very much interested after all to amend the rules of international law. I am much more interested in finding out by whom rules of international law will be adopted and if they will be adopted by strong nations who will continue to violate them. Those are two things that appeal to me first of all of importance.

Chairman WILSON. Are there any further remarks? If not, all in favor of Mr. Coudert's motion, as stated, will please signify the same by saying "aye"; contrary, "no."

The motion prevails.

Now, is there any further discussion?

Mr. CHARLES G. FENWICK. Mr. Coudert has reminded us that we must not expect results too soon. I do not think we are in danger of doing so, and we are quite ready to agree to that point. I should like, however, to suggest that we should not limit ourselves to mere codification of international law. It seems to me quite clear that we shall not get very far toward meeting the problems of the world if we confine ourselves simply to codifying existing law or amending existing law. I feel it highly important that our committee should enter upon certain fields which have hitherto not come within the range of international law. I hope we shall not take so narrow a view of codification as to prevent us from essaying the task of formulating new rules for matters which have hitherto not been touched by international law.

Now, I confess to a great deal of disappointment which has already been expressed by others, that so many of our papers have dealt with the reform of the laws of war, and as Dr. Judson has just stated, feel it much more important that the Society reach out into new fields not hitherto touched upon.

We have not discussed at this meeting the question of international organization. I think we shall not get very far with any international court, unless we proceed to frame a tentative plan of international organization which shall make the law for that court. The process of extending international law by judicial decision is very slow. It will take many decades before much advance is made. Considering the fact that the court has limited its jurisdiction to such cases as may be brought before it, it will not hear cases which touch the real interests of the nations.

Therefore, I urge that the committee consider whether it is not within our jurisdiction to take up questions not hitherto considered as belonging to international law proper, and see if we cannot frame tentative rules to be offered, and make these rules the basis of an enlarged international law which will take into consideration the questions now regarded as matters of policy. Professor Reeves stressed that point yesterday, and I think it highly important to emphasize it again, that matters of policy shall be brought within the realm of law. They can be brought within the realm of

law and there is nothing inherent in them to prevent their being brought within the realm of law, and I say it is our task to try to bring them within the realm of law.

Mr. HYDE. May I add just a word to point out what seems to me to be the opportunity of this committee, if not at the present moment, certainly in the future. We know that in 1923 or in 1924 there will be a conference at the Hague for the advancement of international law; and we know that the United States will participate therein. It is a matter of vast importance that our Government be so fully prepared as to exercise its whole strength in favor of changes and modifications of the existing law which, in the light of the World War, the requirements of justice demand. Such an accomplishment calls for the most thorough preparation involving a close study of precise questions, and definite conclusions as to their solution. In this task of preparation doubtless various departments of the Government will lend valuable aid. But there is also room for the technical aid of a non-governmental and scientific body such as this Society. There is every reason to believe that the State Department will give earnest consideration to any suggestions or proposals which it may offer; and if, through this Committee on Organization, as outlined by Mr. Butler, and Mr. Kuhn, and Mr. Coudert, the Society can agree with substantial unanimity to a few concrete and definite constructive proposals, we may find the United States alert to advocate them. In view of that possibility, I think we ought to be stirred to bend every effort to agree a year hence to a few propositions which we can offer on points concerning which we have a conviction that the law ought to be changed.

Professor JESSE S. REEVES. May I say just one word? Of course, all conferences assume a certain air as to the finality of their deliberations, whether the conference be a federal constitutional convention or a mere subcommittee. It must appreciate its own activities to a certain extent by giving a note of finality to the result of its deliberations. Now, it seems to me that along that line considerable danger lies. There is a considerable assumption on the part of many, perhaps on behalf of most persons interested in international law, that international law should be codified, at least in so far as there may be said to be fairly settled principles. Indeed, if I remember correctly, this Society has had for a number of years a committee on codification of international law. I think this general committee, perhaps this committee which we have just created, might be in the way to invite opinion and perhaps express an opinion with reference to the matter of codification. I confess myself very agnostic with reference to that matter, but I rather fancy I am in the minority. I take it that the function of Subcommittee No. 1 was rather with the question of codification. Perhaps I am mistaken. But certainly the conclusions of this committee are still modestly tentative. Nevertheless, we must face the question as to codification.

It is interesting to note that at the meeting of the Assembly of the League of Nations one of the questions that came up was interpreted by Lord Robert Cecil as squinting toward codification, and, therefore, he opposed it and said it was the least opportune time in the history of international law to undertake codification. I simply throw out that as a suggestion, because I do think it is a very important function of this committee to make some inquiries as to codification at this time.

Now these suggestions come to us in the form, as I understand it, in which they were put out by the committee which drafted the plan for the Permanent Court at the Hague, and we have taken them just as we have gotten them. I must confess that I do not think that layout gives us an actual list of exclusive topics. Nevertheless, in so far as it appears to be exclusive, the first subject does look toward the question of codification, and, therefore, perhaps it might not be presuming that that subcommittee, of which I am not a member, would have something to say pro or con on the general question of codification.

Dr. REINSCH. I confess that I am somewhat surprised that several members of the committee seem to have had fears that there were among us those who consider our functions that of a world legislature. From the discussions it was quite apparent that the value which we see in the work of this committee lies in the material that would be covered, in the opinion which would be focused, in the way in which this Society could cooperate in the formulation of an American policy of international law, but not with the presumption of being able to furnish anything definitive and final.

With respect to the remarks of Mr. Fenwick, I do not believe it is necessary to pass a motion on that subject, because in case it is the desire of the governing board of the Society that those subjects should be considered, then new suggestions should be made as to the gathering of information on what may be feasible in the future. That is where I would lay the emphasis, and I hope my presentation of the committee's intentions and aims did not give a false impression, because it is by no means our desire to go further than to make a report on data, and that function of the committee necessitates, in fact, the organization which has now been provided for under the motion of Mr. Butler. But I have no fear that we shall go too far in the way of trying to lay down hard and fast rules.

Mr. BUTLER. I just want to say one word, and that is with reference to the Committee on Codification. There was to have been a motion presented yesterday that that committee be discharged and that the subjects entrusted to its consideration be transferred to this committee; so that there will be no embarrassment on the question of having a different committee of the Society which might in any way interfere with any one of the subcommittees.

Now, might I make the suggestion that this program calls for meetings of all the subcommittees at 2:30 o'clock. It seems to me, now that the

Committee on Organization has been appointed and that it will be necessary for that committee to have its meeting and delimit these matters so that the subcommittees will have that in their hands before their meetings, that it would be well if that meeting for 2:30 o'clock were postponed to a later hour. At that meeting, as I understand it, the different subcommittees will have to prepare their reports to be presented tonight. There will not be time between now and 2:30 o'clock for the Committee on Organization to get together and make that distribution, so might I suggest that the meeting of the subcommittees be changed from 2:30 to 4:00 o'clock, or even 4:30 p. m. Might it not be well to have it understood when we meet here to go to the White House that the hour of the subcommittee meetings will be announced?

Dr. JUDSON. May I say something in this connection? We have an appointment at the White House at 2:30 p. m., and I think the committee and the chairmen could meet after our adjournment here and then might call the subcommittees at such time as the respective chairmen suggest.

Mr. BUTLER. And let us know that when we come here to go to the White House.

Dr. JUDSON. Yes.

Professor AMOS S. HERSHEY. I have in mind merely one suggestion. I am in thorough sympathy and agreement with the point of view expressed here, more particularly by Dr. Reinsch, that the greatest problems confronting us are those dealing with international organization and international cooperation. I believe those are far and away the most important questions calling for our study and attention. And yet, on the other hand, I do not believe, or at least I fear that we have not as yet reached the stage when we can afford altogether to overlook or neglect the problems connected with the revision of the laws of war. Now, it seems to me that we have no place for that, apparently, in our scheme. The first subcommittee is exclusively occupied or interested in restating the rules of international law as they existed in 1914, and I take it that none of the other committees have had any revision of the laws of war, more particularly of land warfare, within their jurisdiction or province.

Dr. REINSCH. How about the second committee, Mr. Chairman, which has to do with amendments to existing laws?

Professor HERSHEY. Were there any questions of that kind included in the report?

Dr. JUDSON. It was undoubtedly within our scope, but we had no time, although it was within the scope of that committee.

Professor HERSHEY. I would like to make the further suggestion that in the revision of laws of warfare more attention be paid than has hitherto been the case to the actual conditions of warfare and to the opinions of leading military and naval authorities.

Mr. JACKSON H. RALSTON. I am interested, of course, very much in

this discussion, and I count it a piece of good fortune to be a member of the Subcommittee No. 4. The other subcommittees, to a very large degree, discuss the laws of war, or at least that seems to be the thing that is uppermost in the minds of many. I have never been able myself to know what the laws of war are. I have never been able to find that they had any sanction; that they are anything more than the customs which were generally adopted by people who had placed themselves in an abnormal relation to some other people. They are not enforced by any court. They are not laid down by any superior that I know of. Their observance is not obligatory in any way. They are not founded on any reason—absolutely no reason. By way of illustration, if the desire of one nation is to cripple another in warfare and submit it to its wishes, there is no earthly reason why prisoners should not be killed without mercy, provided it tends to carry out the wishes of the party doing the killing. That is the only test that we need of the propriety of the action; but I may be entirely wrong about it. It may be that there is some real philosophical justification for the rules of war which, I confess, has up to the present time entirely eluded me.

Now, I may be wrong again, and probably am, but it seems to me that we may at least hope for that Utopian time to come when the generations that come after us will look back with vague curiosity to what takes place relative to war. Just as we look back with an equally vague curiosity to the ancient specimens of armor, they will wonder why people chose those particular ways of killing each other. We look back to the ways which were adopted or which were formerly adopted in the treatment of slaves. We did away with slaves and we did away with all the regulations concerning slavery; and, taking this probably absolutely unorthodox view of the matter, I do not consider we are getting very far in discussing the laws of war which, after all, may be summed up in a very few words, and that is, the only real practical law of war which nations have recognized is to kill and destroy your enemy just as quickly and effectually as you can; and after all the writings and books we have on the subject, we reduce ourselves right down to that primitive notion when we come to put the so-called rules into effect. If we do not under given circumstances kill our enemies without question it is because we fear that under like circumstances our enemies will kill us without question. So, it is just merely a matter of ultimate convenience whether a given thing is a so-called law or rule or not.

Now, the fourth subcommittee deals with a matter of more importance from my point of view. The existence of armed conflict between nations presupposes a violation of rights; that some nation has done wrong. What does that wrong consist of? We have not yet commenced anything like a scientific examination of that subject. That is assuming the hypothesis I indicated; that is, that the foundation of war is an existing state of wrong in modern society.

I think if we test out this recent great World War we have gone

through, we will come to the conclusion that there was a wrong somewhere; that it was an industrial or economic wrong of some kind which sought redress finally through war, and perhaps as a result of long wrongs by one side or the other; and we will call to mind incidentally the Morocco question, the condition of affairs in Mesopotamia, and in Central Africa where, without any particular rule of law that has been laid down, the nations of the world quarreled about their respective spheres of influence or control.

Now, there was a violation of some law or laws, as I say, in connection with the recent great war, and I think we ought to know what those laws are which were violated. We ought to be prepared to formulate such demands, if you please, against wrong-doing as will bring about better results in the future.

Admiral CHARLES H. STOCKTON. Mr. Chairman, in response to the gentleman who has brought forward the subject of the laws of war, I would say that the laws of war are of no less importance than the laws or rules appertaining to peace time alone. They are an integral part of international law and are the part which represents to the "man in the street" the international law of the period, which law should be followed by the belligerents engaged in war. There is of course at the same time the law of neutrality which is also a war time law.

There is probably no subject germane to international law which has caused so many international conferences as the codes and laws of war. These conferences, sometimes of maritime nations alone, at other times of maritime and land Powers, have defined in various manners, and codified the laws of sea and land warfare to an extent not equalled in codification by the rules of international law applying to peace time alone. The laws of war, and the law of war or military occupation, cover and treat of matters of reality and of conditions existing or likely to exist in war time. It can be truly said that almost, if not all, of the authoritative codifications of international law, are those pertaining to warfare, which includes of course the laws of neutrality and the laws for the mitigation of the severity of war as found in the two Geneva Conventions.

The international conferences of prominence of this nature are those of St. Petersburg and Brussels, the two conferences of Geneva above referred to, the conference after the Crimean War which created the Declaration of Paris, and the two conferences held at The Hague. Not only at these conferences was an agreement arrived at, but conventions or treaties resulted therefrom, duly signed and ratified, which were or should have been of a permanent nature. They have not been disclaimed even in recent wars, even if in some cases they were not followed to a full extent by a delinquent belligerent. The existence of vice does not nullify virtue.

In addition to these codes of war, there have been a general establishment of rules of war, based upon the decisions of learned peoples, generally on matters of naval warfare, which have not been acted upon by conferences

but are generally accepted. In addition there are usages and customs that have grown up, in some cases dating back to the sea codes of the Mediterranean and the Northern seas. There are rules of land warfare derived from the ancients also.

There are no rules of international law, the violation of which cause a more ready and severe punishment than those of the law of war as applied in cases of military occupation. The invader has the inhabitants of an invaded country at his mercy, though his rule is subject to the laws of humanity and affected by the opinion of civilized states. The invasion and occupation of Belgium and northern France is too recent to make that an element of dispute.

When the situation is between belligerents in arms, punishment comes under the law of reprisals on the part of one belligerent against another. It may vary from the deprivation of letters to a prison camp to an execution of prisoners or captive hostages. It is almost as to rules and scope as extensive as the common law or the *lex non scripta* of a nation.

When the outbreak of war changes or creates new conditions, automatically, of all countries of the world into either neutral or belligerent, we cannot evade the laws of war and neutrality, whether we wish to or not. In fact, we cannot wash our hands of these laws unless we abolish war itself.

Even the treaty of peace of Versailles brings to those who have signed and ratified it, an aftermath of war conditions, in times of legal peace.

Chairman WILSON. If there is no other business to come before the meeting, we will adjourn.

(Thereupon, at 12 o'clock noon, the meeting adjourned.)

Reception by the President of the United States

At 2:30 o'clock on the afternoon of Friday, April 29, 1921, the members of the Society in attendance upon the Annual Meeting were received at the White House by the Honorable Warren G. Harding, President of the United States. About 250 members were present at the reception, headed by the Honorable Elihu Root, President of the Society.